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## Changing the Narrative of Child Welfare

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## ESSAY

### Changing the Narrative of Child Welfare

Matthew I. Fraidin\*

#### I. INTRODUCTION

In 1987, Billy Calvin Jones was lucky to be living at Wynne State Prison Farm in the Texas Department of Corrections. The other option was Death Row a few miles away. Billy was eighteen when he and a girlfriend robbed a pharmaceutical warehouse, looking for drugs to fuel their addictions. Billy killed the security guard. He was convicted of capital murder and sentenced to life in prison. The prosecutors called him “venomous” and “a threat to civilized society.”<sup>1</sup>

According to the rock star, David Crosby, of Crosby, Stills, Nash & Young, Billy Calvin Jones represents safety, stability, and maturity. Crosby served a year in the mid-80s in a Texas prison for drug and gun offenses. By that time, Jones had served ten years. He knew his way around. In his autobiography, Crosby tells a different story about Billy Calvin Jones than that recounted by prosecutors at Billy’s trial. Crosby writes, “Even though Billy Jones was younger than me, he was an older and wiser head. He taught me a lot about how to stay alive in prison.”<sup>2</sup>

Rowena Kingston is a recovering crack addict who lost six children to the foster care system when she left them alone for days on end. I know her as the den mother to her entire neighborhood, housing and feeding kids and adults who have nowhere else to turn.<sup>3</sup>

Roberto James was a teenager in foster care. He bounced in and out of a dozen or more schools and probably thirty foster homes and group homes, and was

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1. Interview with Billy Jones, in Huntsville, Tex. (1987). All names, with the exception of Billy Jones’, have been changed to preserve client privacy.

2. DAVID CROSBY, *LONG TIME GONE: THE AUTOBIOGRAPHY OF DAVID CROSBY* 151 (2008).

3. Interview with Rowena Kingston, in Washington, D.C. (2001).

arrested ten times in a year. Roberto constantly was written up for absconding from his group home placements. The other side of the story, though, is that Roberto was the sole caretaker for his baby, and the social work agency wouldn't let him bring his baby to the apartment in which he was housed. So Roberto "absconded" to his mother's house, or his mother-in-law's house.<sup>4</sup> Many who cared about him saw the most gentle parent they'd ever known; the caseworker and judge saw an absconder, a rule breaker—they saw the quintessence of irresponsibility.

So what is this all about?

Well, in law school, I had a friend who often came to class unprepared, or missing a notebook, or rushed into class late, that sort of thing. By way of excuse, he would say, and I quote, "I am a work in progress."

I thought that was sort of silly then, but it turns out that I feel the same way about being a lawyer. Since entering this profession, I have been on a journey. This evening, I'd like to have a conversation about what lawyers do, what lawyers in child welfare *can* do, and how we can do it. My goals are to find a way to do more good than harm as a lawyer, and to feel fulfilled and sustained by doing it.

The short version of the story is that I've always thought that the very essence of a lawyer is to do *something*. I sit up and take notice of lawyers who don't merely watch and let the world take its course. Were I a client, I think I'd want a lawyer who *makes a difference*.

In child welfare, the difference we can make as lawyers for parents, children, and the state, and as judges, is to prevent children from entering foster care unnecessarily. And we can end a child's stay in foster care as quickly as possible. To do that, we have to fight against a powerful narrative of child welfare and against the accepted "top-down" paradigm of legal services.

In this essay, I want to suggest that we can achieve our goals of limiting entries to foster care and speeding exits from it by looking for the strengths of the people involved in our cases, rather than their weaknesses. We can look for what they can do, rather than what they can't. We can focus on their abilities, not the shortcomings over which we often obsess—like drug addiction, impatience, illiteracy, poverty. We can start from a premise that families involved with child welfare are bundles of assets, rather than collections of problems. If we can do all this, we can help families build, rather than watch them fall.

## II. THE PROBLEM

The problem is that we are imprisoned by a grand narrative of child welfare. That narrative is one of brutal, deviant, monstrous parents and children who are

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4. *In re R.J.*, N 1257-94, SF 199343 (D.C. Super. Ct.).

fruit that doesn't fall far from the tree.<sup>5</sup> These are, to use Edgar Cahn's phrase, "throwaway people."<sup>6</sup>

To give you an idea of the relentlessness of the messages drummed into our heads, more than ninety percent of news stories about children are about violence by and against children,<sup>7</sup> and at least ninety percent of those stories focus on a discrete incident, ignoring larger public policy questions.<sup>8</sup> One researcher found that seventy to ninety-five percent of stories about child welfare are "horror stories."<sup>9</sup> These are stories about gruesome, brutal injuries inflicted on children by unfathomably beastly parents. Psychological anthropologist Axel Aubrun and linguist Joseph Grady confirmed that the most common child welfare media story frames depict murders or violent injuries by, in their words, "brutal," "monstrous" parents.<sup>10</sup>

Stories "construct social reality."<sup>11</sup> So, what we think of when we think of children and foster care is brutality, savagery, deviance, and abuse. We think of horrible, heinous misdeeds perpetrated by monstrous felons. We think of murders that scream from the headlines and the vile tragedy of family sexual abuse.

There is another story, however. In fact, more than seventy percent of the children in foster care are there because of allegations that they were neglected, not abused.<sup>12</sup> According to Ruth White of the National Center for Housing and Child Welfare, for example, "Nearly a third of all children in foster care placement are separated from their families because their parents can't afford safe, decent housing."<sup>13</sup> Other children live in foster care because they miss

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5. DOROTHY ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* 65 (1999).

6. EDGAR CAHN, *NO MORE THROWAWAY PEOPLE: THE CO-PRODUCTION IMPERATIVE* 108 (2004).

7. DALE KUNKEL, ET AL., CASEY JOURNALISM CTR. ON CHILDREN & FAMILIES, *COVERAGE IN CONTEXT: HOW THOROUGHLY THE NEWS MEDIA REPORT FIVE KEY CHILDREN'S ISSUES* 7 (2002).

8. *Id.* at 8.

9. See John M. Johnson, *Horror Stories and the Construction of Child Abuse*, in *IMAGES OF ISSUES: TYPIFYING CONTEMPORARY SOCIAL PROBLEMS* 5 (1989).

10. AXEL AUBRUN & JOSEPH GRADY, *HOW THE NEWS FRAMES CHILD MALTREATMENT: UNINTENDED CONSEQUENCES* 3 (2003).

11. Richard Delgado, *Storytelling For Oppositionalists*, 87 MICH. L. REV. 2411, 2415 (1989).

12. "Neglect is the most common form of child maltreatment. Three times as many children are victims of neglect (63.2 %) as are victims of physical abuse (18.9 %)." *Child Abuse and Neglect Fact Sheet*, CHILDREN'S DEFENSE FUND (2005), available at <http://www.childrensdefense.org/child-research-data-publications/data/child-abuse-and-neglect-fact-sheet-pdf>. See also FRED WULCZYN ET AL., *FOSTER CARE DYNAMICS 2000-2005: A REPORT FROM THE MULTISTATE FOSTER CARE DATA ARCHIVE* 56-57 (2007), available at [http://www.chapinhall.org/sites/default/files/old\\_reports/406.pdf](http://www.chapinhall.org/sites/default/files/old_reports/406.pdf) ("Data from National Child Abuse and Neglect Data System (NCANDS) and the National Incidence Studies both suggest that neglect is the primary type of maltreatment among very young children who are reported as victims of maltreatment . . .").

13. SOLUTIONS FOR FAMILIES, Nat'l Ctr. for Housing & Child Welfare, <http://www.nchcw.org/housing/families.aspx> (last visited Oct. 25, 2011). See also Ruth White, *Housing Choice Vouchers: Family Unification Program*, Nat'l Low Income Housing Coal. (May 6, 2009), [http://www.nlihc.org/detail/article.cfm?article\\_id=6051](http://www.nlihc.org/detail/article.cfm?article_id=6051).

school without an adequate explanation,<sup>14</sup> because they are left alone by their parents for excessive periods of time,<sup>15</sup> or, according to researchers Lawrence, Carlson and Egeland, because of “death of a parent, parental incarceration, parental chemical addiction, or homelessness” without maltreatment.<sup>16</sup>

But the grand narrative of rampant deviance and abuse, embedded again and again, has created a pernicious reality. The nuclear secret of child welfare is that most of the children in foster care should not be there. Most of the children in foster care are harmed more than they are helped by being taken from their families and by being kept in foster care for too long.

According to Paul Chill, “more than 100,000 children who were removed in 2001—more than one in three—were later found not to have been maltreated at all.”<sup>17</sup> A 1997 study of infants born to substance-abusing mothers found that the language development of children placed in foster care was delayed in comparison to that of children who remained with their mothers.<sup>18</sup> A 2006 study concluded that children in foster care developed more significant behavioral problems than similarly-maltreated children who remained at home.<sup>19</sup> More recently, an MIT economist studied 15,000 kids and found that children taken from their families and placed in foster care fared worse in life than similarly-maltreated children who were simply left with their families.<sup>20</sup>

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14. See *In re S.D., Jr.*, 549 P.2d 1190, 1198 (Ala. 1976) (noting that during a one week period, the parents were under the influence of alcohol and as a result, the children were not in school. The father testified that his drinking prevented him from driving, one of the children testified that his father would not help him get to school because of the father’s drinking, the parents refused to give one child bus fare so that he might get to school, and the mother’s sickness—which prevented her from seeing that her children got to school—seemed to have been brought on by her drinking); *In re J.C.*, 591 S.E.2d 475, 477 (Ga. Ct. App. 2003) (noting that the children had a high number of unexcused absences from school, there was an extended period of time during which the children continued to miss school, and the parents were unwilling to talk with the school representative about their children’s truancy); *In re Ember “R”*, 727 N.Y.S.2d 767, 768-69 (N.Y. App. Div. 2001) (noting that one child was absent from school thirty-nine times, tardy thirty-eight, and had failing grades; the other child’s attendance record—absent thirty-eight times and tardy thirty-eight times—also was affecting her grades); *In re William A.A.*, 807 N.Y.S.2d 181, 183-84 (N.Y. App. Div. 2005) (noting that child was neglected when his mother removed him from public school and did not enroll him in another school, and left the child home alone while she worked, during which time he was supposed to complete his homework and lessons despite his reading disability and his need for structure and guidance. The court also found that the mother had failed to follow the advice of the child’s psychologist and had taken the child off of prescribed medicine without notifying the doctor. The evidence also established that the mother’s home was extremely cluttered, to the point of being a fire hazard).

15. *In re A.L.W.*, 773 S.W.2d 129, 130 (Mo. Ct. App. 1989) (four children were left at home unattended overnight by the mother and had been left unsupervised on other occasions).

16. Catherine R. Lawrence et al., *The Impact of Foster Care on Development*, 18 DEV. & PSYCHOPATHOLOGY 57, 61 (2006).

17. See Paul Chill, *Burden of Proof Begone: The Pernicious Effect of Emergency Removal in Child Protective Proceedings*, 41 FAM. CT. REV. 457, 458 (2003).

18. See Suzanne Dixon et al., *Early Language Development in Children with Prenatal Exposure to Stimulant Drugs*, 13 DEV. AND NEUROPSYCHOLOGY 371, 371-72 (1997).

19. See Lawrence, *supra* note 16, at 60.

20. See Joseph J. Doyle, Jr., *Child Protection and Child Outcomes*, 97 AM. ECON. REV. 1583, 1584 (2007).

More evidence comes from Florida. In July 2007, Florida housed more than 26,000 children in foster care.<sup>21</sup> Then Florida decided to spend more on family preservation and less on out-of-home care.<sup>22</sup> Two years later, fewer than 20,000 children—a reduction of almost 7000 children—were separated from their families,<sup>23</sup> and safety improved.<sup>24</sup> Among children who were placed in out-of-home care, reunification happened more quickly and more successfully.<sup>25</sup>

Finally, in sixty percent of my students' cases at the University of the District of Columbia, the children were returned home from foster homes or group homes—and were never found to be abused or neglected.<sup>26</sup> These are kids who were taken from their homes for a few days, or a few weeks, or three months—but it turned out they weren't abused or neglected, so they were returned.

One of the children in our cases was Kevin. Kevin was only seven months old at the time he was separated from his mother. He was born HIV-positive. The state took custody of Kevin because test results showed that his viral load was elevated. According to the agency, the doctor who treated Kevin said that the enormous elevation could only have been due to maladministration of the medication by Kevin's mother. The problem was that the test results were a month old, and Kevin's viral load actually was normal on the day he was taken. The other problem is that the doctor later signed a sworn affidavit stating she had never said that there could have been only one cause for the spike in Kevin's viral load. Kevin was returned to his mother's custody.<sup>27</sup>

And Jerome, who was taken from both his mother and his father—who did not

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21. MARY I. ARMSTRONG ET AL., UNIV. OF S. FLA. DEP'T OF CHILD & MENTAL HEALTH SERVS., IV-E WAIVER DEMONSTRATION EVALUATION SEMI-ANNUAL PROGRESS REPORT 21 (2009) (noting that "the number of children active in out of home care in July 2007" was 26,553).

22. *Id.* at 39 ("There have been notable changes in the composition of spending statewide since the Waiver was implemented. As hypothesized, total spending on front-end services has increased dramatically from pre-Waiver to the second full year after Waiver implementation (Figure 7). After adjusting for inflation, front-end service expenditures nearly doubled during that time, rising from \$22.4 million in SFY 05-06 (3.3% of total expenditures that year) to \$41.5 million (6.1%) in SFY 08-09.").

23. *Id.* at 21 ("When comparing the number of children active in out-of-home care in July 2007 (n=26,553) to the number of children active in out-of-home care in June 2009 (n=19,649), the range was 6904. This finding supports Hypothesis 1: over the life of the Waiver, fewer children will need to enter out-of-home care. The results of analysis of variance (ANOVA) showed that this reduction is statistically significant . . ."); *see also id.* at 9 ("[T]he number of children served was increasing each year until the year of the IV-E Waiver implementation (SFY 06-07). During the following two years, the number of children served by lead agencies decreased by 29%.").

24. *Id.* at 27 ("The results of Cox regression analysis indicated a significant reduction in re-entry rates for exit cohort SFY 07-08 compared to exit cohort SFY 06-07 . . .").

25. *Id.* at 24 ("The results of chi-square analysis indicated a significant increase in the number of children who were reunified or placed with relatives in a timely manner compared to exit cohort SFY 07-08 . . .").

26. Richard Wexler, *Take the Child and Run: How ASFA and the Mentality Behind it Harm Children*, 13 UDC L. REV. 435, 437 (2010).

27. Facts taken from a 2008-09 case in which author's clinical law students at the University of the District of Columbia David A. Clarke School of Law represented "Kevin's" mother.

live together—because his uncle came to school and beat him up for stealing a video game. The uncle didn't live with either parent or the child! Jerome lived with strangers in foster care for a month and a half.<sup>28</sup>

And finally, Isaac, who was apart from his mother for three months. The government alleged that Isaac's grandfather had beaten him across the legs and that Isaac's mother knew about it and failed to stop it. The government also alleged that Isaac was "educationally neglected" because he had missed seven days of school in the first two months of the term. Three months later, at trial, it turned out that the government couldn't even prove that Isaac had been hit, let alone by his grandfather. And the educational neglect? One of the days they said Isaac was absent was the day the social worker went to the school and took Isaac to foster care!<sup>29</sup>

The judge sent Isaac back home after three months.

So, we have a foster care system full of children who should be at home. What does it look like? Well, things haven't improved since 1991, when the National Commission on Children wrote "If the nation had deliberately designed a system that would frustrate the professionals who staff it, anger the public who finance it, and abandon the children who depend on it, it could not have done a better job than the present child-welfare system."<sup>30</sup>

Children and youth in foster care experience multiple moves from home to home and high levels of abuse in foster homes and group homes.<sup>31</sup> Former foster

28. Facts taken from a 2008–09 case in which author's clinical law students at the University of the District of Columbia David A. Clarke School of Law represented "Jerome's" mother. *See also* Statement for Press Conference by Matthew Fraidin, Assoc. Professor of Law, UDC David A. Clarke School of Law, D.C. Child Welfare by the Numbers: The 97% Solution (Jan. 7, 2009); Petula Dvorak, *Child Deaths Led to Excessive Foster Care Placements, Critics Say*, WASH. POST, Jan. 8, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/01/07/AR2009010703582.html>.

29. Facts taken from a 2008–09 case in which author's clinical law students at the University of the District of Columbia David A. Clarke School of Law represented "Isaac's" mother.

30. NAT'L COMM'N ON CHILDREN, BEYOND RHETORIC: A NEW AMERICAN AGENDA 293 (1991).

31. *See* Nell Bernstein, ALL ALONE IN THE WORLD: CHILDREN OF THE INCARCERATED 145 (2005) ("Children are significantly more likely to be abused and neglected in foster homes than are their peers in the general population."); *see also* Dana DiFilippo, *Avalanche of Anguish*, PHILA. DAILY NEWS, Jan. 21, 2010. The article quotes Children's Rights, Inc. attorney, Marcia Lowry, who stated: "I've been doing this work for a long time and represented thousands and thousands of foster children, both in class-action lawsuits and individually, and I have almost never seen a child, boy or girl, who has been in foster care for any length of time who has not been sexually abused in some way, whether it is child-on-child or not." *Id.*; Leslie Kaufman & Richard Lezin Jones, *Report Finds Flaws in Inquiries on Foster Abuse in New Jersey*, N.Y. TIMES, May 23, 2003, at A1 (reporting research findings that allegations of abuse and neglect in state foster homes frequently are mishandled, and that "'no assurances can be given' that any child in the state-monitored foster homes or institutions is actually safe"); NAT'L COAL. FOR CHILD PROT. REFORM, FOSTER CARE VS. FAMILY PRESERVATION: THE TRACK RECORD ON SAFETY (2010), *available at* <http://www.nccpr.org/reports/01SAFETY.pdf>. [A]n Indiana study found three times more physical abuse and twice the rate of sexual abuse in foster homes than in the general population. In group homes there was more than ten times the rate of physical abuse and more than twenty-eight times the rate of sexual abuse as in the general population, in part because so many children in the homes abused each other. *Id.*



youth have sky-high rates of homelessness,<sup>32</sup> unemployment,<sup>33</sup> poverty,<sup>34</sup> arrest<sup>35</sup> and incarceration,<sup>36</sup> teen pregnancy,<sup>37</sup> dating violence victimization,<sup>38</sup> and low educational achievement.<sup>39</sup>

This is the child welfare system we create by telling only stories of “Rowena Kingston, the crack fiend,” and “Roberto James, the bad kid.”

But we can weave a new narrative. As Professor Richard Delgado has written, “We *decide* what is and, almost simultaneously, what ought to be.”<sup>40</sup> We create the world as we describe it. We can create *success* by telling new stories.

### III. THE SOLUTION

We need to figure out what we can do. How can we be part of the solution? How can we disrupt the status quo, instead of perpetuating it? How can we fight the narrative?

Fortunately, to paraphrase Brendan Sullivan, Oliver North’s lawyer, we are not potted plants.<sup>41</sup> We can do something. We *must* do something, because we’re standing here.

What I propose is a paradigm shift. The low-income people you’ll meet in this line of work? Suspend disbelief for a moment, and convince yourself they’re rich. The crummy neighborhoods the children come from and broken-down communi-

32. See MARK E. COURTNEY ET AL., MIDWEST EVALUATION OF ADULT FUNCTIONING OF FORMER FOSTER YOUTH: OUTCOMES AT AGE 21, at 3 (2007), available at [http://www.chapinhall.org/sites/default/files/ChapinHallDocument\\_1.pdf](http://www.chapinhall.org/sites/default/files/ChapinHallDocument_1.pdf); see also Bernstein, *supra* note 31, at 147 (“In California, 65 percent [of youth who leave the foster care system at the age of majority] transition directly into homelessness.”).

33. See Bernstein, *supra* note 31, at 147 (“Nearly half of all eighteen-year-olds leaving the foster care system do so without a high school diploma; fewer than 40 percent are able to find and keep a job.”); see also GLORIA HOCHMAN ET. AL., THE PEW COMM’N ON CHILDREN IN FOSTER CARE, FOSTER CARE: VOICES FROM THE INSIDE 8 (2003), available at <http://pewfostercare.org/research/voices/voices-complete.pdf>. Hochman observed: A study conducted by the University of Wisconsin found that 37% of the youth emancipated from foster care in 1995 still had not completed high school, [and that] [f]ocus groups with 100 youth in Nevada found that 41% did not have enough money to cover basic living expenses; 24% had supported themselves at some time by dealing drugs; and 50% left foster care without a high school degree. *Id.*

34. See CASEY FAMILY PROGRAMS, THE CASEY YOUNG ADULT SURVEY: FINDINGS OVER THREE YEARS (2008), available at <http://www.casey.org/resources/publications/CaseyYoungAdultSurveyThreeYears.htm> (last visited Nov. 21, 2010).

35. See *id.*

36. Bernstein, *supra* note 31, at 147 (“A University of Chicago study of more than seven hundred teenagers in foster care found that 61 percent of boys and 41 percent of girls had been arrested by the age of seventeen.”).

37. CASEY FAMILY PROGRAMS, *supra* note 34.

38. Melissa Jonson-Reid et al., *Dating Violence Among Emancipating Foster Youth*, 29 CHILD. & YOUTH SERVS. REV. 557, 567 (2007).

39. COURTNEY ET AL., *supra* note 32, at 26.

40. Delgado, *supra* note 11, at 2416.

41. *Iran-Contra Investigations: Hearing Before the Select Comm. on Secret Military Assistance to Iran and the Nicar. Opposition*, 100th Cong. (1987) (statement of Brendan Sullivan, Defense Counsel, Oliver North).



ties you see all around you? Think of those as strong and healthful, instead of shabby and pathologized.

Here's how.

To challenge the narrative of child welfare, we will have to start by challenging our approach to legal services. Anti-poverty programs in general, and legal service providers in particular, see clients as the sum of their needs. Clients and litigants come to us with their problem. Indeed they only get our attention because they *have* a problem. And the first thing we ask is "What is your problem? What do you need? How can I help you?" And we try to solve the problem. We fill the hole, apply a Band-Aid, put a finger in the dike, whatever. You've heard the metaphors.

But what is the result? More poor people than ever, families being broken up, children bouncing around foster care.

Here is a different model. Instead of merely asking: "What is your problem? What is the disease, the defect that brought this mother and her child into my life," we can ask a different question. Not what is she lacking, but what does she have? Not only "what can I do?" but we can also ask a client or litigant "what can *you* do?" What are her abilities, her strengths, her assets?

How can we re-envision her as rich, powerful, and capable?

Well, can the mother whose child is taken away braid hair? Can she cook a meal? Can she smile at an elderly person in a nursing home? And let's think about that person in the nursing home. Can she watch a child recite a poem and clap for the child? Can she read a story? Can she share her own story about life "in the old days"? Does she know by heart, perhaps, a recipe for the best fried turkey you've ever eaten?

We can see with different eyes, and look for successes. Did the child's mother pull her neighbor's weeds last week? Or change a light bulb? Or pick up litter? These are things she did, not things she didn't.

Can she shop for groceries? Can she throw a party or drive a neighbor to the doctor? Can she paint a room or clean a house or walk a dog?

The answers will be yes, yes, and yes.

In Chicago, eighth-graders in special education tutor first-graders in math.<sup>42</sup> In Washington, D.C., returned prisoners give children safe passage to school.<sup>43</sup>

In Washington, D.C., our Youth Court is run by kids we might call juvenile delinquents. Youth Court gives us a chance to call them judges and jurors. It is a diversion program in which the very youth who come through the court as

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42. Edgar Cahn, *Introducing the Core Economy and Co-production*, at 4, <http://www.socialinclusion.org.uk/publications/Introcoreeco.pdf>.

43. See Chris L. Jenkins, *In Ward 7, Men's Morning Patrols Aimed at Giving Kids "Safe Passage" to School*, WASH. POST, Sept. 15, 2010, [http://www.washingtonpost.com/therootdc/in-ward-7-mens-morning-patrols-aimed-at-giving-kids-safe-passage-to-school/2011/09/15/gIQA181fVK\\_story.html](http://www.washingtonpost.com/therootdc/in-ward-7-mens-morning-patrols-aimed-at-giving-kids-safe-passage-to-school/2011/09/15/gIQA181fVK_story.html).

defendants sit as jurors, reviewing infractions of other youth.<sup>44</sup> They hear facts, deliberate, and impose sentences of community service, restitution, counseling, or an apology.<sup>45</sup>

So it turns out that delinquent youth also are judges!

Our clients can do the things we professionals do. Research is clear, for example, that women in violent relationships are the very best judges of their own safety, better than the police, lawyers, caseworkers, or even judges.<sup>46</sup> In Washington, D.C., when our highest court ruled that there was no statutory right to custody for non-parents, low-income grandmothers descended on the city Council, submitting statements, and testifying about the necessity that the law be amended.<sup>47</sup> And it was.<sup>48</sup> Currently, in Washington, D.C., a homeless homeless advocate is leading a campaign to restore funding for homeless services.<sup>49</sup>

So our clients from Ward 8 in Washington, D.C., from the Bronx, New York, from a Chicago housing project, a Detroit slum, and a gang zone in Los Angeles can all *do something*. Sure, in some respects, they *can't*, but in others, they *can*.

Now, if the mother is a person with assets, wealth, power, and strength, we see her differently. We learn from her, we admire her, we grow from knowing her.

It turns out we don't have all of the answers. We don't have a preordained stereotype into which we can fit her any more. She has busted through the narrative. We have to take her for who she is, the real person, the complicated three-dimensional, real person. She isn't a stick figure—the deviant, monstrous black hole of problems, needs, and pathologies.

And her strengths and powers and abilities unlock ours.

First, we can tell stories of competence: this is our client, and these are the many things she can do! Instead of defensively trying to explain away those problems and needs, we can tell a story of strength, power, and admirable qualities. Rather than begging the court and caseworker for scraps—an extra hour of visitation, for example—we can proudly and confidently argue that separation is unnecessary, or that reunification should come quickly. This is my client! She can do it!

And second, working with this person inspires and challenges us in a way that working for a stick figure cannot possibly do. Our work is exciting, not depressing! We collaborate with rich, nuanced, textured peers, rather than

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44. DC TIME DOLLAR YOUTH COURT, <http://youthcourtofdc.org/about-youth-court> (last visited Sept. 15, 2011).

45. *Id.*

46. See Margaret Johnson, *Balancing Liberty, Dignity, and Safety: The Impact of Domestic Violence Lethality Screening*, 32 CARDOZO L. REV. 519, 559-60 (2010).

47. *Safe and Stable Homes for Children and Youth Amendment Act of 2007: Hearing on B17-0041 Before the Comm. on Human Servs. of the D.C. Council*, 17th Sess. (2007).

48. *Safe and Stable Homes for Children and Youth Amendment Act of 2007*, D.C. CODE § 16-831 (2007).

49. Nathan Rott, *D.C.'s Homeless Homeless Advocate*, WASH. POST, December 13, 2010, at A1 (discussing Eric Sheptock's efforts on behalf of Washington, DC's homeless community via online social networking).

resignedly imposing our will on the frightened losers we are conditioned to see. We can spend our energies creating and problem-solving, rather than dampening hopes and delivering bad news.

In child welfare, family strengths animate the practice of the Center for Family Representation (CFR) in New York City<sup>50</sup> and the Detroit Center for Family Advocacy (CFA).<sup>51</sup>

The Center for Family Representation represents parents whose children are at risk of entering foster care.<sup>52</sup> With a lawyer, social worker, and parent peer advocate, CFR has kept fifty percent of the kids from ever entering foster care,<sup>53</sup> and, for those who do enter, they return home in four months instead of the state average of three years.<sup>54</sup> Similarly, Detroit's Center for Family Advocacy represents parents of children already found to be abused or neglected.<sup>55</sup> In its first two years of operation, CFA kept 112 kids out of 112 from entering foster care.<sup>56</sup>

#### IV. CALL TO ACTION

*Lawyers do things.* They don't stand and watch and think it's right because everyone else does it, because the courthouse culture has always done it this way, because the old-timers do it this way, or even because a law professor tells them to do it this way. Lawyers don't stand idly by just because that's what a judge wants. And this—reducing the scourge of unnecessary foster care placements and lengthy stays in foster care—is what there is to be done in child welfare. Every lawyer and judge involved in child welfare has the opportunity to do *this*—to keep children from unnecessary, devastating disruption, fear, and pain.

We *can* assume that every client and every litigant and every witness is different from every other one. We *can't* assume we've seen this one before, that we can spot this kind of case a mile away. We have to resist the tendency to say, "Oh, yeah, sure, this is the *fill in the blanks* kind of case." This is the "mother who is a victim of domestic violence" case. This is the "untreatable manic-depressive"

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50. See generally CTR. FOR FAMILY REPRESENTATION, INC., [http://www.cfrny.org/new\\_legal.asp](http://www.cfrny.org/new_legal.asp) (last visited Oct. 13, 2011) ("Working with partner organizations, our teams strive to create for each family a specialized plan that will achieve long-term success so that they can stay together safely and permanently.").

51. See generally DETROIT CTR. FOR FAMILY ADVOCACY, <http://www.law.umich.edu/centersandprograms/ccl/cfa/Pages/default.aspx> (last visited Sept. 15, 2011) (noting that the Center "Empowers parents and extended families to care for their own children."). See also Nancy Colon, *Afraid to Speak Up: My Journey Through the Child Welfare System*, 13 MICH. CHILD WELFARE L.J. 13 (2009).

52. See CTR. FOR FAMILY REPRESENTATION, *supra* note 50.

53. *Id.*; Edgar Cahn et al., *Public Notice Forums: Choosing Among Alternatives to Confront the Intent Requirement*, 44 CLEARINGHOUSE REV. J. OF POVERTY L. AND POL'Y 165, 170 (2010).

54. See CTR. FOR FAMILY REPRESENTATION, *supra* note 50.

55. DETROIT CTR. FOR FAMILY ADVOCACY, *supra* note 51.

56. VIVEK S. SANKARAN, UNIV. OF MICH. CHILD ADVOCACY LAW CLINIC, DETROIT CTR. FOR FAMILY ADVOCACY REPORT 4 (2011) (on file with author).

case. This is the “immature-father-still-sponging-off-his-mother” case.

Because if we know all the answers from the outset, we don’t get to do any thinking. We don’t get to get to know this particular client, this particular human being. We don’t get to hear her story, because we don’t have to. And we can just stand around and let the world take its course.

But that’s not what lawyers do. We change the course of events. We add value. We make a difference.

So instead of knowing the answers, we can ask questions. A lawyer can ask a parent or a child, “Who are you? What do you do? What do you know? Who do you love? What was your greatest success? What is your dream? What is your favorite food? What’s the most frivolous thing about you? What makes you laugh?”

As it happens, it’s much more fun to practice law as if your goal is to make a difference. If your goal is to make a difference, you’ll have to learn, instead of know. You’ll have to listen instead of tell. You can ask instead of declaim. You’ll get to know the dozens and hundreds of people you’ll come across, rather than spend your days interacting with the fleshly embodiment of your assumptions. You’ll hear real people, not a pathologized, stereotyped version of them created by your own preconceived notions. And instead of hanging out with people whom you despise or, at best, for whom you have compassion, you get to be with a bunch of fascinating people from whom you’re learning and with whom you’re growing.

Conducting a job interview once, I had been having a bad time. My clients were all going through hard times, and I think I was looking for support from the poor interviewee! So I asked her, “Don’t you get depressed about these cases? All these bad things happening?” She answered, very thoughtfully, “I remember that my clients are more than their sadness.” And David Chavkin writes that each of our clients, like each of us, has a unique “constellation of family, friends, experiences, goals, dreams, needs, problems, and other factors.”<sup>57</sup> Assuming your client is a bundle of assets unlocks for you an opportunity to meet those fascinating people and to represent them far more effectively.

You will go to court and you will see things that appall you. In a New Jersey case, a lawyer didn’t bother to meet with his client for the eight months preceding the client’s termination of parental rights trial. And the lawyer justified his actions by telling the Court “I can learn everything I need to from him in three minutes at counsel table.”<sup>58</sup> That lawyer doesn’t need to meet with his clients because he thinks he already knows all the answers.

In one reported case, a lawyer told a judge that it was a “foregone conclusion”

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57. DAVID CHAVKIN, *CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS* 40 (2002).

58. N.J. Div. of Youth & Family Servs. v. A.C., No. FG-16-23-07, 2009 WL 1790463, at \*8 (N.J. Super. Ct. App. Div. 2009).

that his clients' rights would be terminated.<sup>59</sup> In another, a lawyer said his client's rights "*should* be terminated."<sup>60</sup>

We can't be that lawyer. We can't be that person.

What can we do? Well, that's the fun part. There is no limit, because the facts are always different and your imagination is boundless if you let it be. When the agency shrugs its shoulders and says four siblings will have to live with strangers instead of with their grandmother because the grandmother doesn't have enough beds for the children, you can pull out a credit card, as I saw a lawyer do. He told the judge that *he* would buy the beds, and the judge ordered the agency to reimburse him. In a criminal case, a judge delayed sentencing for a man convicted of stealing classified documents, because the defendant's lawyer wrote a sentencing memorandum citing eight cases that the judge had never seen, and which supported a shorter sentence.<sup>61</sup> A few months ago, ACLU lawyers may have stopped some executions by uncovering emails indicating that states hadn't complied with an administrative requirement to register their purchases of a drug used in the death cocktail.<sup>62</sup> That's plain, everyday lawyering, not Thurgood-Marshall-changed-the-world lawyering, and I think we can do it.

## V. CONCLUSION

So, I have painted the world in black and white: either you passively sell your clients down the river by going along and getting along, or you stand valiantly in the breach, determinedly fighting for justice. I know that's not really the way the world works, of course, nor the way any of us humans can function. Some days we're on, some we're off, some we're funny and some sad. Sometimes we're energetic and other times we're slugs.

What you can do as a lawyer, however, is to be aware of yourself. You can be reflective and self-conscious in the most constructive way. What are the choices I am making here? Am I assuming weakness or am I looking for strengths? Am I seeing only disease, or am I finding health? Do I wallow in the worst of my client, or build on her best? What is the story I tell myself about my client, and what, then, is the story I tell the Court? (If I am the judge, what stories am I listening for?) What story am I conveying to the client herself? Am I, as Tennessee lawyer Jim Neal once said, ready to be "the only person by my client's side, all the way to the electric chair"?<sup>63</sup>

I'll conclude by returning to Roberto, the teenager I mentioned at the opening

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59. *In re* S.T.W., 39 S.W.3d 517, 520 (2000).

60. *In re* J.M.B., 939 S.W.2d 53, 54 (Mo. Ct. App. 1997).

61. Ruben Castaneda, *Sentencing Postponed in Taking of Documents*, WASH. POST., Mar. 2, 2006, at A8.

62. Greg Bluestein, *Emails Show States Didn't Register Execution Drug*, ASSOCIATED PRESS, May 19, 2011, available at [http://seattletimes.nwsources.com/html/nationworld/2015095479\\_apusexecutiondrugshortage.html?syndication=rss](http://seattletimes.nwsources.com/html/nationworld/2015095479_apusexecutiondrugshortage.html?syndication=rss).

63. Videotape: Ethics In America: To Defend A Killer (CBS News Broadcast 1988).

of this essay. He was constantly arrested *and* very sweet; he fought with police *and* was gentle. Tragically, Roberto was shot and killed. Fittingly, the scene had dual storylines. Roberto was killed by a fifteen-year old, angered that Roberto had been stealing the other child's drug stashes. Roberto had been doing it to support his two children, but the boy with the gun knew only the wrongfulness, not the righteousness, of Roberto's actions. Roberto's funeral was a gruesome affair, with people screaming and wailing and crying, and the minister begging Roberto's friends not to retaliate against the killer and his friends. It was scary and horrible and awful.

But the story has unfolded differently since then. There has been no retaliation. The two mothers of Roberto's two children, formerly rivals, now live together and raise their children as one family. Roberto's sister had a child about a year ago. She named him Roberto, and I'm watching him grow up in Facebook posts and photos.

It is a truism that there are at least two sides to every story. In child welfare, we tend to listen for stories of sadness and failure, stories of disability and incapacity. Our power and our joy, however, are unleashed when we help children and families tell stories of happiness, success, strength, and achievement. Wishing won't make drug dependency vanish, but an addict can be more to us than her illicit hunger.

Parenting coaches tell us that "what we focus on, grows." So accentuating the positive won't pay the rent or get rid of roaches or cure a mental illness, but embracing all parts of a family's reality, including the admirable parts, can deepen our investment in them and our commitment to them.

As I hear myself tell the story, I know the positives of Roberto's death don't outweigh the negatives. And I don't mean to be Pollyanna. I mean only to point out that plus and minus live together, that positives and negatives come side-by-side, and that joy can be sorrow's companion, if we insist.

Being a lawyer is an incomparable gift. It can be a gateway to worlds of exploration and growth. What I hope for all of us is to see the best in others, to learn from everyone around us, and to find out, by examining our own choices, who we really are.

The grand narrative of child welfare is blight and poison and savagery, failed children and parents and families. But Professor Delgado reminds us that "Counterstories . . . challenge the received wisdom . . . [and] open new windows into reality, showing us that there are possibilities for life other than the ones we live."<sup>64</sup> We can change the narrative of child welfare by telling counter-stories of strengths and successes.

If we refuse to be potted plants, if we seek and tell stories of strength, we can do more good than harm as lawyers, open those "new windows," and live together in a new reality.

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64. Delgado, *supra* note 11, at 2414.